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OFFICE OF THE SECRETARY TO THE PRESIDENT NOTIFICATION

New Delhi, the 31st March, 1953

S.R.O. 629.—The following Order made by the President is published for general information:—

ORDER

WHEREAS a question was raised whether certain members of the Legislative Assembly of the State of Vindhya Pradesh have become disqualified for being members of the said Assembly under Section 17 of the Government of Part C States Act, 1951 (LXIX of 1951), read with sub-clause (a) of clause (1) of article 102 of the Constitution by reason of their having accepted offices as members of certain District Advisory Councils appointed by the Lieutenant-Governor of the said State;

AND WHEREAS in pursuance of clause (1) of the Order of the President, No. 7-PA, dated the 16th January 1953 made under Section 49 of the said Act, the question was referred to the President for his decision;

AND WHEREAS in pursuance of clause (2) of the said Order, the President has now obtained the opinion of the Election Commission thereon, which is hereto appended;

NOW, THEREFORE, in exercise of the powers conferred on him by clause (1) of the said Order and acting according to the opinion of the Election Commission, the President hereby decides that the following members of the Legislative Assembly of Vindhya Pradesh have become subject to the disqualification mentioned in Section 17 of the said Act, read with sub-clause (a) of clause (1) of article 102 of the Constitution for membership of the Legislative Assembly of the State of Vindhya Pradesh, by reason of their having accepted offices of profit as members of the District Advisory Councils:—

- (1) Shri Brajraj Singh Tiwari, Rewa District.
- (2) Shri Chandra Pratap Tiwari, Sidhi District.
- (3) Shri Narendra Singh, Panna District.
- (4) Shri Lal Mohammad, Panna District.
- (5) Shri Panna Lal, Chhatarpur District.
- (6) Shri Govinda Das, Chhatarpur District.
- (7) Shri Pyare Lal, Chhatarpur District.
- (8) Shri Shyam Sundar Das "Shyam", Datia District.
- (9) Shri Laxmi Narain, Datia District.
- (10) Shri Ramdas Chowdhury, Datia District.
- (11) Shri Rilli Charmakar, Tikamgarh District.
- (12) Shri Thakur Das Mishra, Tikamgarh District.

RAJENDRA PRASAD,
President.

31st March, 1953.

APPENDIX

No. 118/1/53.

ELECTION COMMISSION

INDIA.

1, Aurangzeb Road,
New Delhi, 2.

Dated the 2nd March, 1953.

FROM

Shri S. Sen, I.C.S.,
Chief Election Commissioner,
New Delhi.

To

The Secretary to the President of India,
New Delhi.

SIR,

I have the honour to refer to your letter No. 24/53, dated the 17th January 1953, requesting the Election Commission to give its opinion as to whether certain members of the Legislative Assembly of Vindhya Pradesh have become disqualified for being members of that Assembly.

2. The Commission has heard the person who made the representation to the President, Shri Narmada Prasada Singh, as also those members of the Legislative Assembly of Vindhya Pradesh who, in pursuance of a notice from the Commission, wanted to have their point of view in the matter represented. Both parties were represented by Counsel. The Government of Vindhya Pradesh also wanted to be made a party to the enquiry proceedings held by the Commission, and were allowed to be represented by their own lawyer who was also heard.

3. The enclosed note gives the reasons for the opinion tendered to the President. In the opinion of the Commission, the following members of the Legislative Assembly of Vindhya Pradesh have become subject to disqualifications for being members of the Assembly as a result of holding offices of profit under the Government of Vindhya Pradesh:—

- | | |
|-----------------------------------|--------------------------|
| (1) Shri Brajraj Singh Tiwari | ... Rewa District. |
| (2) Shri Chandra Pratap Tiwari | ... Sidhi District. |
| (3) Shri Narendra Singh | ... Panna District. |
| (4) Shri Lal Mohammad | ... Panna District. |
| (5) Shri Panna Lal | ... Chhatarpur District. |
| (6) Shri Govinda Das | ... Chhatarpur District. |
| (7) Shri Pyare Lal | ... Chhatarpur District. |
| (8) Shri Shyam Sundar Das "Shyam" | Datia District. |
| (9) Shri Laxmi Narain | ... Datia District. |
| (10) Shri Ramdas Chowdhury | ... Datia District. |
| (11) Shri Rilli Charmakar | ... Tikamgarh District. |
| (12) Shri Thakur Das Mishra | ... Tikamgarh District. |

Yours faithfully,

(Sd.) S. SEN,

Chief Election Commissioner,

2-8-53.

On the 30th October, 1952, Shri Narmada Prasada Singh, a member of the Legislative Assembly of Vindhya Pradesh, submitted a representation to the President of India raising the question as to whether certain members of the Vindhya Pradesh Legislative Assembly have incurred disqualifications for being members of that Assembly on account of their holding offices of profit under the Government of Vindhya Pradesh. Vindhya Pradesh is a Part C State in the Union of India. The Government of Part C States Act, 1951 (XLIX of 1951) contains provisions similar to Articles 101 as also 191 of the Constitution regarding the question of the disqualification of members for various reasons including the holding of offices of profit. The Act, however, makes no provision as to how such a question has to be raised and decided. Under the Constitution, the procedure to be followed in respect of these matters has been laid down under Articles 103 and 192 which deal with the cases of disqualification of members respectively of either House of Parliament or either House of the Legislature in Part A and Part B States. This difficulty was apparently felt after the representation under consideration was actually made to the President. On the 14th January, 1953, the President made an order in exercise of the powers conferred by Section 43 of the Government of Part C States Act—whose provisions correspond to the provisions of Articles 103 and 192 of the Constitution—the deciding authority being made the President himself. Under the terms of this order of the 14th January, 1953, the question raised by Shri Narmada Prasada Singh has been referred to the Election Commission for giving its opinion thereon. The President will decide the question after the Commission's opinion has been received.

2. The Vindhya Pradesh Legislative Assembly has sixty members. One of the members having died, there is a vacancy which is yet unfilled.

3. On the 26th April, 1952, the Government of Vindhya Pradesh appointed a District Advisory Council for each of the eight districts in the State. An attested copy of the order, No. 47 of that date, is annexed hereto (Annexure A). It will be noticed that by paragraph 2 (c) of the order, the members of the Legislative Assembly representing the districts were all appointed members of the District Advisory Councils. Paragraph 8 of the order provides that the non-official members (which term includes the members of the Legislative Assembly of the district) will get T.A. and D.A. (daily allowance) applicable to the members of the Legislative Assembly for the day or days of the meeting. By a subsequent order, No. 129 of the 6th December, 1952, (attested copy enclosed as Annexure B), order No. 47 previously referred to was amended to the effect that members of the Legislative Assembly representing a district would be members of the District Advisory Council provided they had given their consent in writing to act as such. It will be noticed that this amending order was issued after the present representation had been sent to the President. The terms of this amending order cannot, therefore, affect the question which is now under consideration, and it must be held that whether or not consent has been given in writing by a member of the Legislative Assembly to act as a member of the District Advisory Council, he was in fact appointed a member of such Council.

4. In his representation, Shri Narmada Prasada Singh (who will be referred to as the petitioner henceforth for the sake of convenience) stated in paragraphs 3 and 4 thereof that all those members who had attended meetings of these Advisory Councils had by their action and conduct accepted membership of these Councils and agreed to receive payments of the remuneration in the shape of T.A. and D.A. payable to such members, and accordingly these members had incurred the disqualifications under Section 17 of the Government of Part C States Act, 1951, read with Article 102 of the Constitution of India and Section 7 (d) of the Representation of the People Act, 1951. In subsequent paragraphs, he submitted that the seats of such members had become vacant automatically whether such members have, in fact, drawn their remuneration or not.

5. It may be mentioned that the petitioner has wrongly described the District Advisory Councils as the District Advisory Committees. The inaccuracy, however, is not material as it is well understood what he actually means; and, in fact, the members concerned did not raise any objection on this ground. The other point to note in respect of the petitioner's representation is that he has not given any details as to which particular members of the Vindhya Pradesh Legislative Assembly actually attended meetings of these Councils, or otherwise accepted membership of the Councils; nor has he specified which of them received payment of any travelling allowance or daily allowance.

6. As the bulk of the members of the Assembly appeared to be affected by the petitioner's representation, the Commission felt that it would be most convenient to give a hearing to the parties at Rewa itself where the Assembly was in actual session from the third week of February, 1953. The date of hearing was fixed for Sunday, the 22nd February last, when the petitioner and many of the affected members were present and were represented by their lawyers. The Vindhya Pradesh Government requested the Commission by a telegram, on the 17th February last, to allow the Government to appear as a party and to argue the legal issues at the time of the hearing, inasmuch as the Government felt that it was morally responsible for appointing the legislators as members of the District Advisory Councils. The Commission informed the Government that their request would be heard in the presence of the parties and decided on merits. At the time of the hearing, no serious objection was raised against allowing the Government to present its point of view before the Commission. The Commission allowed the Government's prayer on the ground that it should have an opportunity of answering any charge that might be made against it to the effect that it was trying to influence the members of the Assembly by appointing them to offices of profit. The learned Advocate for the Vindhya Pradesh Government was accordingly heard, along with the other parties, on the date of hearing.

7. Annexure C is the list of the members of the Legislative Assembly who were represented by Counsel at the hearing.

8. It is not alleged that the members of the District Advisory Councils who are members of the Assembly received any salary as such. Reference has already been made to paragraph 8 of Order No. 47 creating these Councils. It is this paragraph alone which makes provision for the payment of any money to these members. The paragraph runs as follows:—

"8. The non-official members will get the T.A. and D.A. applicable to the members of Legislative Assembly for the day or days of the meetings."

The details as to what travelling allowance and daily allowance are payable to members of the Legislative Assembly will appear from Annexure D which is entitled "RULES TO REGULATE TRAVELLING ALLOWANCES OF MEMBERS OF THE VINDHYA PRADESH ASSEMBLY". Rule 1 (A) provides that where a member of the Assembly is required to leave his usual place of residence for the purpose of attending a meeting of the Assembly or of transacting any other business concerning his duties as a member, he may draw rail fare at the rate of 1½ first class fare. It may be mentioned that in respect of this part of the emoluments of an M.L.A. member of a District Advisory Council, it was not seriously urged on behalf of the petitioner that this constitutes any source of profit. Rule 1 (B) provides that road mileage is payable at the rate of eight annas per mile. No serious objection was raised on behalf of the petitioner to this provision either. Then follows the following provision:—

"A consolidated daily allowance of Rs. 5/- per diem for each day of residence at the place where Assembly meets or other business is transacted until the close of the session or the completion of the

other business and for one day before the session and the day following the completion of session if the member is in Rewa on those days."

It was urged on behalf of the petitioner that this daily allowance of Rs. 5 should be held to be a source of profit, and any member of the Assembly who holds the office of a member of any of the District Councils should accordingly be deemed to hold an office of profit disqualifying him for being a member of the Legislative Assembly. It was brought to the notice of the Commission that on the 20th January, 1953, this daily allowance of Rs. 5 had been raised to Rs. 10 per diem. The Commission held, however, that any variation of the terms made after the question under consideration had already been raised by the petitioner, could not be taken into account in considering the present representation. Rule 5 lays down again that "a member who is a resident of the place at which Assembly meets or other business connected with his duties is transacted, is entitled to draw an allowance of Rs. 5/- per diem for the days on which he actually attends such meetings or transacts such other business". This also, according to the petitioner, renders the office of a member of a District Advisory Council an office of profit.

9. It has already been mentioned that the petitioner did not supply the names of the particular members who attended the meetings of any of the District Advisory Councils. In order to collect the information, the Commission issued a questionnaire to each member of the Legislative Assembly (through the Chief Secretary of the Vindhya Pradesh Government) requesting him to answer the questionnaire for the consideration of the Commission. Practically every member of the Legislative Assembly answered the questionnaire, and it appears from these answers that none of the members formally accepted in writing his appointment as a member of any District Advisory Council. A number of them, however, attended one or more meetings of one of the Councils. A few of them actually drew the daily allowance and travelling allowance to which they were entitled under the rules. It was argued on behalf of the opposite parties that the following members of the Assembly, who are the Ministers and the Speaker of the Assembly, were not actually appointed as members:—

- | | |
|-------------------------------|-----------------|
| (1) Shri Shambhunath Shukla | } Ministers. |
| (2) Shri Gopal Sharan Singh | |
| (3) Shri Lala Ram Bajpai | |
| (4) Shri Dan Bahadur Singh | |
| (5) Shri Mahendra Kumar Manav | |
| (6) Shri Shiva Nand | Speaker. |

This is not quite correct. The terms of Order No. 47 are that all members of the Legislative Assembly representing a district will be members of the District Advisory Council. The Ministers and the Speaker were also accordingly appointed members of the Councils concerned, whether they acted as such or not. It is admitted, however, that they neither accepted the office nor attended any meeting of any of the Councils. It was not disputed, therefore, that the present representation does not affect this class of M.L.A.s

10. In the next category, we have the following members:—

- (1) Shri Narmada Prasada Singh.
- (2) Shri Someshwar Singh.
- (3) Shri Lal Behari Singh.

It is admitted that they were appointed members of the Councils, but refused their membership formally and did not attend any meeting of the Councils. It appears that, out of them, Shri Lal Behari Singh alone formally refused the

appointment on 29-9-52, i.e., before the date of the present representation. The other two, including the petitioner, refused their appointments after the present representation had been sent to the President. For reasons to be recorded later, the Commission feels, however, that the question whether any formal letter of refusal was sent or not, or the date of such refusal, is not material for the purposes of the present discussion.

11. Next come eight members who neither accepted the offer nor refused the same formally; nor did they attend any meeting of a District Advisory Council. The members concerned are the following:—

- (1) Shri Ram Kishore Shukla.
- (2) Shri Keshav Prasad.
- (3) Shri Govind Narain Singh.
- (4) Shri Ram Sajiwan.
- (5) Shri Kaushlendra Pratap Bahadur Singh.
- (6) Shri Het Ram.
- (7) Shri Sahadev Charmakar.
- (8) Shri Ram Prasad Singh.

It was urged on behalf of the petitioner that Shri Keshav Prasad had written a letter to the Deputy Commissioner of Satna stating that he had intended to join a meeting of the Satna District Advisory Council, but was unable to do so as he was late in reaching Satna. It was argued that this tantamounts to the member's acceptance of the office and, consequently, he should be deemed to have incurred the penalty. The Commission cannot accept that argument for two reasons. In the first place, it was denied on behalf of Shri Keshav Prasad that any such letter had been written. Secondly, the petitioner's representation is specifically directed against members who actually attended meetings of the District Advisory Councils, and not against anyone who may not have attended a meeting but who may have otherwise overtly or impliedly accepted the appointment. In the Commission's view, therefore, even if the petitioner's allegation made at the time of the hearing in respect of Shri Keshav Prasad be correct, the present representation does not cover his case.

12. The following fifteen members admittedly attended meetings of the District Advisory Councils concerned and drew travelling allowance and daily allowance:—

- (1) Shri Shyam Lal Sahu.
- (2) Shri Raghuraj Singh.
- (3) Shri Narain Das.
- (4) Shri Thakur Das Mishra.
- (5) Shri Rilli Charmakar.
- (6) Shri Krishna Kant Rai.
- (7) Shrimati Sumitri Devi.
- (8) Shri Shyam Kartik.
- (9) Shri Darhi Singh.
- (10) Shri Bhai Lal.
- (11) Shri Bhuneshwar Prasad.
- (12) Shri Baikunth Prasad.
- (13) Shri Shri Niwas Tiwari.
- (14) Shri Chandra Pratap Tiwari.
- (15) Shri Gungadhar.

13. The last batch of members, numbering 27, attended one or more meetings of a District Advisory Council, but did not actually draw any travelling allowance or daily allowance. Their names are as follows:—

- (1) Shri Brajraj Singh.
- (2) Shri Jagdish Chandra Joshi.
- (3) Shri Ram Das.
- (4) Shri Laxmi Narain.
- (5) Shri Shyam Sundar Das "Shyan".
- (6) Shri Lal Mohammad.
- (7) Shri Narendra Singh.
- (8) Shri Babadin.
- (9) Shri Adityanath Singh.
- (10) Shri Saraswati Prasad Patel.
- (11) Shri Padamchand Patni.
- (12) Shri Jagat Bahadur Singh.
- (13) Shri Balwant Singh.
- (14) Shri Rana Shamsher Singh.
- (15) Shri Shatru Sudan Singh.
- (16) Shri Rajeshwar Prasad Misra.
- (17) Shri Ramadhar Pandey.
- (18) Shri Kanta Prasad Saxena.
- (19) Shri Shri Gokal Prasad.
- (20) Shri Panna Lal Jain.
- (21) Shri Govinda Das.
- (22) Shri Dewan Pratap Singh.
- (23) Shri Pyare Lal.
- (24) Shri Basant Lal Sharma.
- (25) Shri Bhura.
- (26) Shri Sarju Prasad Chandpuria.
- (27) Shri Rajendra Bahadur Singh.

14. It was admitted at the hearing that it made no difference as to whether a member had, in fact, drawn any travelling allowance or daily allowance or not. The factum of actual payment is of no consequence, and so long as any profit is attached to an office, it does not matter whether the profit had in fact been appropriated or not. There is, therefore, really no distinction between the last two categories of members mentioned above.

15. The questions that were debated before the Commission on behalf of the parties at the time of the hearing were—

- (1) Is membership of a District Advisory Council of Vindhya Pradesh an "office" at all?
- (2) Is it held under the Vindhya Pradesh Government?
- (3) If it is an "office", is it an "office of profit"?
- (4) In each individual case, can the member be actually said to "hold" the office?

16. Let us take the last question first. The representation, as already stated, having been directed against members who have actually attended meetings of the District Advisory Councils, this question raises no difficulty. Any member of the Assembly who has actually attended a meeting of a Council cannot but be said to have "held" such membership. Those who have not attended any meeting of a Council are outside the purview of the present investigation.

17. We may next take up the question as to whether the membership of one of these Councils is an "office" at all. On this point, learned discussions were held and reference made to authorities, ancient and modern, from the law prevailing in England, as to what constitutes an "office". The definition of the term "office" was read from several authorities as, for instance, Burrow's WORDS AND PHRASES, Tomlin's LAW DICTIONARY, Luce's LEGISLATIVE ASSEMBLIES, and several reported English cases; reference was also made to the definition of the term "office of profit" in Iyer's LAW LEXICON OF BRITISH INDIA. The Commission feels that it will not be of very much real assistance if one analyses all the definitions and authorities cited in regard to this matter. Parliamentary life in England has its own peculiar history and tradition going back for many centuries, and recourse had to be had there at times to legal fictions in order to get rid of technical legal difficulties arising directly from the history of development of this branch of parliamentary law and practice. Compare, for instance, the institution of the Chiltern Hundreds and Manor of Northstead. It would be purposeless, in the view of the Commission, to introduce in its entirety the considerations that obtain in England while dealing with a question like the present one. Although the expression "office of profit" has been adopted in our Constitution and laws, it can hardly mean the same thing technically as it does in England. It would be more reasonable and desirable that we should rather concentrate upon the underlying principles and the real intention of the Constitution in incorporating this salutary provision against the acceptance of certain offices by members of legislatures. Undoubtedly, the intention is to keep the legislatures independent of the executive. It was felt obviously that the Executive Government of the Union, or of a State, should be discouraged from holding out blandishments to members of the legislatures, so that the latter would be free to carry out their duties to their electorate uninfluenced by any considerations of personal loss or gain. If the Executive Government have untrammelled powers of offering to legislators any appointments, positions or offices, however they may be described, which carry emoluments of some kind or other with them, there would be a clear risk that an individual member might feel himself beholden to the Executive Government and thus lose his independence of thought and action in his capacity as a member of the legislature and a true representative of his constituents. That will be a very great danger to the proper development of democratic institutions and the democratic way of Government in the country; and this is the likely abuse which the Constitution seeks to prevent by the provisions which we have under consideration at present. If the membership of a committee, council, board or whatever it is, can be made use of by a Government to put a member of a legislature under its obligation in the slightest way, such membership should be regarded as an "office" which would come within the purview of the penal Articles of the Constitution.

18. To come down to the question at present before us, one of the definitions given in Tomlin's LAW DICTIONARY quoting Blackstone, is given as "a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging, whether public as those of magistrate, or private as of bailiffs, receivers and the like". Again, "There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to make hay, plough land, herd a flock, etc., which differ widely from that of the Steward of a manor." We find this as well: "Officers are public or private, and it is said that every man is a public officer who hath any duty concerning the public; and he is not the less a public officer where his authority is confined to narrow limits; because it is the duty of his office, and the nature of that duty, which makes him a public officer, and not the extent of his authority." On behalf of some of the members, reference was made to Burrow's WORDS AND PHRASES where it is pointed out that, in order to constitute an "office", the post should possess existence independent of the incumbent. Even if this be held to apply, there appears to be no difficulty in the matter inasmuch as even if X, a member of the Legislative Assembly, resigns or is unseated, his successor-member would, under the terms of the Government order, become *ex-officio* member of the particular District Advisory Council. The appointment purports to have been made *ex-officio* and is so in fact. In case of a vacancy, the Government can fill it up by a successor on an *ex-officio* or even some other basis. The members of District Advisory Councils certainly carry out public functions. It was pointed out that their functions are advisory and not executive. That does not make any material difference, in the opinion of the Commission.

19. As to how the term "office" is interpreted by our own parliament, reference was made on behalf of the petitioner to Section 2 (e) of the Parliament (Prevention of Disqualification) Act, 1951 (Act LXVIII of 1951), by which membership of committees set up by the Government of India or the Government of any State was treated as an "office", and it was also envisaged therein that membership of these committees might, in fact, be "offices of profit". On a consideration of the authorities cited and the arguments advanced, as also the underlying principles of our Constitution and the terms and provisions of the Act mentioned above (Act LXVIII of 1951), there can be no doubt left in one's mind that membership of a body set up by Government, like the Vindhya Pradesh District Advisory Councils, is an "office" within the meaning of Sections 16 and 17 of the Government of Part C States Act, 1951, read with the provisions of articles 101 and 102 of the Constitution.

20. We shall next deal with the question as to whether such membership is an office "under" the Vindhya Pradesh Government. The argument was advanced on behalf of the petitioner that the District Advisory Councils having been appointed by the Government itself, they could also be dissolved or dismissed by the same Government, and that this makes its membership an office *under* the Government. On behalf of the opposite parties, it was urged on the other hand that before an office can be said to be "under" the Government, there must be some disciplinary or supervisory powers in the Government over the members; and, as in this case there are no such powers reserved to Government, the requirements are not satisfied so as to enable an office like this to be called an office "under" the Government. It was further urged that if an office is not under the Government, the independence of a member accepting that office cannot be affected in any way, and consequently, the acceptance of such an office could not be held to come under the mischief of the relevant penal provisions of the Constitution and the law. It appears to the Commission that there is no real substance in the arguments advanced in support of the members. The Councils were created by a mere executive order of the Government, and admittedly, that order has already been amended in some respects by a subse-

quent order of the same Government. There is nothing to prevent the Government from amending the order further in other ways. The members of the Councils accordingly hold their office at the sweet will of the Government. Moreover, the office is one entirely in the gift of the Government, and if, in addition to this, it is remembered that Government can easily make it a source of profit to the members of these Councils and also take away any such profit attaching to the office, there can be no doubt that it should be deemed to be an office "under" the Government. In view of all these circumstances, the Commission is clearly of the opinion that this office must be considered as an office under the Government.

21. This brings us to the next question as to whether membership of a District Advisory Council of Vindhya Pradesh is an "office of profit". It was admitted on all hands during the arguments that "profit" within the meaning of the relevant provisions of the Constitution and the law must be material in character and not merely moral or spiritual. It was also accepted—and this is also the English law—that the actual quantum of the profit does not matter. Any material advantage, howsoever insignificant, will constitute "profit" and bring the member in question within the mischief of the relevant provisions. The English law in this respect is, however, very strict, and in the recent cases relating to the Coatbridge and Springburn Divisions which arose after the General Elections of 1945, it was held that even a trivial amount paid for subsistence and travelling expenses to members of tribunals set up under the Control of Furnished Rents Act, 1943, does constitute a "profit". As a result of this finding, the "Coatbridge and Springburn Elections (Validation) Act, 1945" had to be enacted to validate the election of the members concerned. These cases in the opinion of the Commission, are far too extreme in nature, and there is no justification for adopting such a strict and technical view of the matter in India. The word "profit" should, in the view of the Commission, be given a reasonable and natural interpretation. Reimbursement of mere out-of-pocket expenses should not be treated as "profit" in this view, and that also seemed to be at least one of the contentions conceded on behalf of the petitioner at the time of the actual hearing. No doubt, the Coatbridge and Springburn cases were also relied upon by the Petitioner. The Commission, for the reasons stated above, is not prepared to take as strict a view of the matter as was taken in those cases, and where a member of a Council, committee, or board is merely entitled to a *bona fide* travelling allowance or daily allowance which purports to cover and presumably covers his actual out-of-pocket expenses, the Commission is not prepared to hold that there has been any "profit". There is, however, considerable force in the argument advanced on behalf of the petitioner that if consideration is paid on a different basis, that is, in the shape of a remuneration, "sitting fee" or "attendance fee", it becomes a "profit" because it does not even purport to cover any actual expenses. Such consideration or remuneration should be deemed to constitute "profit" even though, on detailed accounting, it may be found that no financial advantage has, in fact, been gained by the member in question. In the present case, the consideration or emolument that has been offered to the members of the Councils is in the shape of travelling allowance and daily allowance, and does not purport to be either salary or remuneration as such without any reference to out-of-pocket expenses. Apparently, therefore, the payment that has been made to the members should not normally be considered to be "profit". It must be made clear, however, that although a particular payment may purport to be in the nature of a travelling allowance or a daily allowance, it may in substance, in extreme cases, be turned into a source of profit. As for instance, the allowances paid to members may be designated as travelling allowance and daily allowance but the rates thereof may be fixed at so high a figure that the designation merely serves as a cloak for making undesirable payments to members who may be appointed to a council, committee, etc. The Commission would certainly be entitled in such cases to go

behind the apparent terms of the appointment of the members of such a Committee, council, board, etc., and probe into the real substance of the matter, so that parliamentary life may be kept pure and unsullied and the functioning of true democracy may not run the risk of being hampered by undesirable influences. In the present case, however, the travelling allowance paid is $1\frac{1}{2}$ times the first class railway fare, which admittedly is the same rate as what is paid to the higher grade of Government servants serving the State. Travelling allowance is presumed not to be a source of profit, and the rates are fixed for Government servants with that end in view. It may, therefore, be safely and reasonably presumed that the payment of $1\frac{1}{2}$ first class railway fares to the members of District Advisory Councils cannot be a source of profit to them. As for the daily allowance, the rate is Rs. 5/- per diem, which is no princely sum. The same was also paid until recently to the members of the Legislative Assembly in respect of their attendance at the sessions of the Assembly. Normally, therefore, this petty sum of Rs. 5/- per diem cannot be said to yield any profit to the members of the Councils who go to attend meetings thereof.

22. It was also pointed out on behalf of the petitioner, however, that a number of the members concerned are resident at the District Headquarters of the respective districts where the Councils held their meetings. It was argued accordingly, that at least so far as they are concerned, they could not be said to have undergone any out-of-pocket expenses in attending the meetings of the Councils, and, secondly, the payment of this daily allowance to these members (who were described for brevity's sake as "resident members") cannot but have been a source of profit to them, and they must accordingly be held to have incurred disqualifications. This argument, in the Commission's view, has a good deal of force. Members who have to come to the District Headquarters from outside and have no place of residence therein, undoubtedly have to undergo various items of out-of-pocket expenses. "Resident members"—at least some of them—may, on the other hand, only have to engage some conveyance to go to the meetings from their residences and return therefrom. On behalf of the petitioner, it was further argued that all the District Headquarters towns in Vindhya Pradesh are very small places and it is not usual for an ordinary person to engage any conveyance to go from one part of the town to another; in any case, conveyance charges, even if incurred, cannot possibly amount to the sum of Rs. 5/-. This, it was argued, is supported by the fact that members coming from outside the District Headquarters towns are paid the very same amount which is supposed to cover not only their conveyance charges, but also the cost of their meals, transport of their belongings and other incidental expenses. These last items of expenditure, it was argued, are not, in the nature of things, required to be incurred by the "resident members". No convincing reply could be advanced on behalf of the opposite parties to this line of reasoning. By making the daily allowance rate the same for resident and non-resident members, the Government has certainly laid itself open to the charge of offering a certain amount of "profit"—a very small profit, no doubt—to the "resident members". In view of the accepted position that the quantum of profit is not a material consideration, the Commission has no alternative but to take the view that members residing in the District Headquarters towns, who have attended any of the meetings of the respective District Advisory Councils, should be deemed to have held offices of profit under the Government. They have, therefore, incurred the disqualification referred to in Section 17 of the Government of Part C States Act, 1951, and the Commission advises the President accordingly.

23. The Commission obtained from the Secretary of the Legislative Assembly of Vindhya Pradesh a list of the members of the Assembly, the names of the constituencies which they respectively represent, and their residential addresses as recorded in the office of the Assembly. It is understood that these

addresses were supplied by the members themselves. From this list (Annexure E), it appears that the following members of the Vindhya Pradesh Legislative Assembly have their residences in the District Headquarters towns of the districts in respect of which they attended a meeting or meetings of the District Advisory Councils:—

(1) Shri Brajraj Singh Tiwari	... Rewa District.
(2) Shri Chandra Pratap Tiwari	... Sidri District.
(8) Shri Narendra Singh	... Panna District.
(4) Shri Lal Mohammad	... Panna District.
(5) Shri Panna Lal	... Chhatarpur District.
(6) Shri Govinda Das	... Chhatarpur District.
(7) Shri Pyare Lal	... Chhatarpur District.
(8) Shri Shyam Sundar Das "Shyam"	Datia District.
(9) Shri Laxmi Narain	... Datia District.
(10) Shri Ramdas Chowdhury	... Datia District.
(11) Shri Rilli Charmakar	... Tikamgarh District.
(12) Shri Thakur Das Mishra	... Tikamgarh District.

(Sd.) S. SEN,
Chief Election Commissioner,
2-8-1958.

ANNEXURE "A"

GOVERNMENT OF VINDHYA PRADESH
(GENERAL ADMINISTRATION DEPARTMENT.)

ORDER

Dated, Rewa, V.P., the 26th April, 1952.

No. 47. The Government have been pleased to appoint a District Advisory Council for each district.

2. Each District Advisory Council will consist of—

- (a) The Deputy Commissioner as Chairman.
- (b) Other Chief District Officers, *viz.*, the District Executive Engineer, District Forest Officer, District Superintendent of Police, District Medical Officer, District Supply Officer and District Agriculture Officer
- (c) Members of the Legislative Assembly representing the district, and
- (d) Five other non-officials to be nominated by the Government as members.

3. The District Councils will ordinarily meet once a month. Extraordinary meetings may be summoned by the Chairman on a requisition by not less than 5 members.

4. The District Council will review the activities in the district in the previous month and make recommendations on any matter concerning the district. It will also consider and give its views on any matter referred to it by the Government.

5. The District Council shall discuss only matters of public importance and shall not deal with questions relating to staff appointments, promotions, transfers, disciplinary actions, etc.

6. After each meeting the Chairman will forward to the Government the recommendations, if any, of the District Council.

7. The official members will get their usual T.A. and D.A. for attending these meetings.

8. The non-official members will get the T.A. and D.A. applicable to the members of Legislative Assembly for the day or days of the meetings.

By order of
the Lt.-Governor.

Sd./- BADRI PRASAD,
Chief Secretary to
Government of Vindhya Pradesh.

ANNEXURE "B"

GOVERNMENT OF VINDHYA PRADESH
CHIEF SECRETARY'S DEPARTMENT (GENERAL ADMINISTRATION SECTION).

ORDER No. 129

Dated, Rewa, the 6th December, 1952.

The Government have been pleased to order that Paragraph 2 (c) of G.A.D. Order No. 47, dated the 26th April, 1952, may be amended to read as under:—

"Members of the Legislative Assembly representing the district provided they have given their consent in writing to act as such."

By order of
the Lt.-Governor.
Sd./- DEBI PRASAD,
Deputy Secretary,
for Chief Secretary.

ANNEXURE "C"

1. *List of M.L.As. represented by Shri K. L. Misra (only):*

- (1) Shri Aditya Nath Singh.
- (2) Shri Saraswati Prasad Patel.
- (8) Shri Padam Chand Jain.
- (4) Shri Narendra Singh.
- (5) Shri Haji Lal Mohamed.

2. *List of M.L.As. represented by Shri A. P. Pandey.*

- (1) Shri Dadhi Singh.
- (2) Shrimati Sumitri Devi.
- (3) Shri Jagat Bahadur Singh.
- (4) Shri Shyam Kartik.
- (5) Shri Shri Niwas Tiwari.
- (6) Shri Jagdish Chand Joshi.
- (7) Shri Ram Kishore.
- (8) Shri Sahadai

3. *List of M.L.As. represented by Shri Lal Yadvendra Singh.*

- (1) Shri Govind Narain Singh.

4. *List of M.L.As. which are commonly represented.*

- (1) Hon. Shri Shambhoo Nath Shukla.
- (2) Hon. Shri Lal Dan Bahadur Singhji.
- (3) Hon. Shri Lal Gopal Saran Singhji.
- (4) Hon. Shri Walla Ramji Bajpaijee.
- (5) Shri Mohendra Kumar Manav.
- (6) Shri Rajeshwari Prasad Misra.
- (7) Shri Rana Shamsheer Jung.
- (8) Shri Kesho Prasad.
- (9) Shri Shatru Sudan Singh.
- (10) Shri Brij Raj Singh Tiwari.
- (11) Shri Ram Sajiwan.
- (12) Shri Lal Bihari Singh.
- (13) Shri Ramadhar Pandey.
- (14) Shri Panna Lal Jain.
- (15) Shri Kamta Prasad Saxena.
- (16) Shri Narayan Das.
- (17) Shri Shyam Lal Sahu.
- (18) Shri Ramdas.
- (19) Shri Shyam Sunder Das.
- (20) Shri Laxmi Narayan Mateh.
- (21) Shri Rilli Charmakar.
- (22) Shri Pratap Singh.
- (23) Shri Het Ram.
- (24) Shri Bhura.
- (25) Shri Sarju Prasad Chandpuria.
- (26) Shri Gokul Mahashaya.
- (27) Shri Payare Lal.
- (28) Shri Govind.
- (29) Shri Thakur Prasad Mishra.
- (30) Shri Raghuraj Singh.
- (31) Shri Shiva Nand.
- (32) Shri Baikuntha Prasad.
- (33) Shri Ram Prasad.
- (34) Shri Basant Lal Sharma.
- (35) Shri Bhai Lal.
- (36) Shri Bhuwaneshwar Prasad.
- (37) Shri Guru Gangadhar.

HARISH KUMAR SRIVASTAVA,
Counsel in the three Groups
except Group No. 3.

ANNEXURE "D".

RULES TO REGULATE TRAVELLING ALLOWANCES OF MEMBERS OF THE VINDHYA
PRADESH ASSEMBLY.

*As issued under the Government of Vindhya Pradesh (Judicial and Legislative
Department) Order No. 47 F.D., dated 6th May, 1952.*

Except as provided in rule 5, these rules do not apply to those members of the Assembly whose usual place of residence is the place where the Assembly or one of its Committees meets.

ALLOWANCE OF MEMBERS OF ASSEMBLY.

1. The members of the Assembly will be entitled to the following rates of travelling and daily allowances in respect of their journeys to attend a session of Assembly or one of its Committees:—

(A) JOURNEYS BY RAIL.

A member of the Assembly who is required to leave his usual place of residence for the purpose of attending a meeting of Assembly or of transacting any other business concerned with his duties as a member may draw Rail fare at the rate of 1½ first-class fare.

Note 1.—For the purpose of calculating mileage allowance, a journey between two stations is held to be performed by the shortest of two or more practicable routes or by the cheapest of such routes as may be equally short.

Note 2.—A member who proceeds to attend a session of Assembly or one of its committees from a place to other than his usual place of residence or returns thereto on the termination thereof may draw T.A., to and from the place at which Assembly meets or other business is conducted either from or to the place where he actually makes the journey or to usual place of residence whichever is less.

(B) JOURNEYS BY ROAD.

Road mileage at the rate of annas 8 per mile for such part of the journey as cannot be performed by rail including the journey from and to the railway station and from member's residence at the place where Assembly meets or the other business is conducted.

Note 1.—Member who performs a journey by road between places connected by rail wholly or in part may draw mileage allowance at the rate of annas -/8/- per mile provided that the total amount so drawn is limited to what would have been admissible had the member travelled by rail road in the ordinary way.

Note 2.—Road mileage will be computed @ -/8/- per mile irrespective of the fact whether the road journey is performed by car or any other means of conveyance.

"A consolidated daily allowance of Rs.* 5 per diem for each day of residence at the place where Assembly meets or other business is transacted

* Rs. 10 per diem from 20-1-53.

until the close of the session or the completion of the other business and for one day before the session and the day following the completion of session if the member is in Rewa on those days".

2. *Journeys where the means of conveyance are supplied without charge.*

A member who performs a journey or part thereof in a conveyance provided at the expense of Government shall only be entitled to draw a daily allowance of Rs. 5 per diem for any day not less than six hours of which have been occupied in performing such journey or part thereof.

Note.—The term 'day' means a calendar day beginning and ending at midnight.

3. *Travelling allowance for intermediate absence during a session.*

For intermediate absence lasting for less than four days during the course of a session or before the completion of the business, a member will be entitled to draw either (A) a single 1st Class fare and road mileage to the place to which he proceeds and back, or (B) daily allowance for the period of absence whichever is less.

For absence of the duration of five days or more, no allowance of any kind will be admissible.

4. *Travelling allowance during intervals between the termination of a session or a committee and the commencement of another committee or session.*

When there is an interval of not more than three days between the termination of the meetings of the session or a committee and the commencement of those of another session or a committee at the same place both of which a member is required to attend and when such a member remains at the place during the interval he will be entitled to draw daily allowance for such period of residence.

If, however, such a member leaves the place during the interval, his absence will be treated as an intermediate absence and the allowance admissible will be regulated under rule 3 above.

5. *Allowance admissible to members residing at the place where the Assembly meets.*

A member who is a resident of the place at which Assembly meets or other business connected with his duties is transacted, is entitled to draw an allowance of Rs. 5 per diem for the days on which he actually attends such meetings or transacts such other business.

6. *Certificates in support of travelling allowance claims.*

A member who claims any travelling allowance under these rules shall support his claim by a certificate in the following form:—

"Certified that no amount has been claimed for this Journey period in any bill drawn from any other source."

7. *General.*

Except to the extent indicated in these Rules, the rules in the Government of India Supplementary Rules will apply.

ANNEXURE 'E'.

LIST OF ELECTED MEMBERS OF THE VINDHYA PRADESH LEGISLATIVE ASSEMBLY
CORRECTED UP TO 31ST DECEMBER, 1952.

S. No.	MEMBERS NAME.	NAME OF THE CONSTITUENCY.	PARTY AFFILIATION.	RESIDENTIAL ADDRESS.
<u>DISTRICT REWA.</u>				
1	Shri Satnandan Singh ..	.. Raipur.	Congress	Vill. Joginihai, P. O. Raipur.
2	Shri Jagdish Chandra Joshi	.. Rewa	Socialist	Narain Niwas, Civil Lines, Satna.
3	Shri Brijraj Singh ..	.. Gurb	Congress	Manikwar Kutir, Civil Lines, Rewa.
4	Shri Shrinivas Tiwari ..	.. Mangawan	Socialist	Vill. & P. O. Tooni.
5	Shri Narmada Prasad Singh	.. Sirmour	K. M. P. P.	91, Luker Road, Allahabad.
6	Shri Baikunth Prasad ..	.. Semaria	Congress	Vill. & P. O. Sirmour.
7	Shri Rana Samsar Singh	.. Garhi	Congress	Vill. & P. O. Teonthar.
8	Shri Rajeshwar Prasad Misra	.. Teonthar	Congress	Vill. Dhakhara, P. O. Teonthar.
9	Shri Someshwar Singh ..	.. Manganj-Naigarhi.	Independent	Vill. & P. O. Naigarhi.
*10	Shri Sahdeya ..	.. Do.	Socialist	Vill. Khitauni, P. O. Raghunathganj.
11	Shri Bhubaneswar Parsad <i>alias</i> Shri Ishwaracharya.	Hanumana	R. R. Parishad.	Vill. & P. O. Venkatnagar, Distt. Shahdol
<u>DISTRICT SATNA.</u>				
12	Shri Shivanand, Hon'ble Speaker ..	Satna	Congress	Civil Lines, Rewa.
13	Shri Kausolendra Pratap Singh.	Bahadur Kothi	R.R. Parishad	Vill. & P. O. Kothi.
14	Shri Ramadhar Pandey ..	.. Amdara	Congress	Vill. & P. O. Maihar.
*15	Shri Hatram ..	.. Nagod	Congress	Vill. Pataura, Tahsil Nagod.
16	Shri Gopal Saran Singh, H.M.P.J. ..	.. Do.	Do.	Civil Lines, Rewa.
17	Col. Balwant Singh ..	.. Ramnagar	Jan-sangh	Vill. & P. O. Deoraj-nagar, Distt. Satna.
18	Shri Kesho Prasad ..	.. Mukundpur	Congress	Vill. Badwar, P. O. Gur, Distt. Rewa.
19	Shri Lal Behari Singh ..	.. Amarpatan	Do.	Vill. & P. O. Ahirgaon.
20	Shri Govind Narain Singh	.. Rampur Baghelan.	Do.	Vill. & P. O. Rampur, Baghelan.
21	Shri Ram Sajwan ..	.. Sabhapur	Do.	Vill. & P. O. Jaso.
<u>DISTRICT SIDHI.</u>				
22	Shri Bhai Lal ..	.. Kanpura	Socialist	Vill. Sawaicha, P. O. Sidhi.
23	Shri Jagat Bahadur Singh	.. Churhat	Do.	Vill. Barkheda, Tahsil Gopadbanas.

*Scheduled Castes & Scheduled Tribes.

24	Shri Chandra Pratap Tewari	..	Sidhi Madwas	Socialist	Vill. & P. O. Sidhi.
*25	Shri Darhi Singh	..	Do.	Do.	Vill. Chauphal, P. O. Churhat.
26	Shri Shyam Kartik	..	..	Singrauli-Niwās	Do.
*27	Shrimati Sumitri	..	..	Do.	Do.
28	Shri Gangadhar	..	..	Deosar	Jan-sangh
					Vill. Phulkesh, Tahsil Deosar.

DISTRICT SHAHDOL.

29	Shri Shambhu Nath Shukla, H.C.M.	..	Amarpur	Congress	Civil Lines, Rewa.
30	Shri Dan Bahadur Singh, H.M.I.	..	Pusprajgarh	Do.	Do.
*31	Shri Ram Prasad Singh	..	Do.	Do.	Vill. Girari, P.O. Jaitah-ari.
32	Shri Padma Chand Patni	..	Jaitpur-Kotama	Do.	P. O. Bijuri-Kotma,
*33	Shri Sahib Singh (died)	..	..	Vacant.	
34	Shri Lal Rajendra Bahadur Singh	..	Sohagpur	Independent	Vill. & P.O. Sohagpur.
35	Shri Saraswati Prasad Patel	..	Burnar	Congress	Vill. & P.O. Burhar.
36	Lal Aditya Nath Singh	..	Umaria	Do.	Vill. & P. O. Umaria.
*37	Shri Babadin	..	Bohari	K.M.P.P.	Vill. Bhulehra, P. O. Beohari.
38	Shri Ram Kishore	..	Do.	Socialist	Vill. & P.O. Beohari.

DISTRICT PANNA.

39	Shri Narendra Singh	..	..	Pawai	Congress	Raj Mandir Palace Panna.
*40	Shri Bhura	..	..	Do.	Do.	Vill. Garhipadaria, P.O. Debendranagar.
41	Shri Lal Mohammad	..	..	Ajaigarh	Do.	Bilain Mohalla, Panna.
42	Shri Sarju Prasad Chandpuria	..	..	Panna	Do.	Vill. Barsobha, P. O. Debendranagar.

DISTRICT CHHATARPUR.

43	Shri Kanta Prasad Saxena	..	Chandla	Do.	2/452, Holipura Ward No. 2, Datia, Distt. Datia.
44	Shri Mahendra Kumar Jain, H.M.S.	..	Laundi	Do.	Civil Lines, Rewa.
45	Shri Gokul Prasad	..	Raj Nagar	Do.	83, Garhi Ward, Rajnagar.
46	Shri Panna Lal	..	Chhatarpur	Congress	364, Pratap Sagar Ward, Chhatarpur.
47	Shri Govinda	..	Do.	Do.	36, Katra Ward, Sarani Darwaja, Chhatarpur.
48	Shri Divan Pratap Singh	..	Bijawar	Do.	Pratap Niwas, Nowgong
*49	Shri Pyarelal	..	Do.	Do.	952, Hatwara Mohalla Chhatarpur.
50	Shri Basant Lal	..	Malahara	Do.	Village Sadwa P. O. Molahra.

DISTRICT DATIA

51	Shri Shyam Sundar Das 'SHYAM' Dy. Speaker.	..	..	Datia	Do.	1/194, Mudian-Ka-Kuan Datia.
52	Shri Luxmi Narain	..	..	Seondha	Do.	1/368, Mohalla-Patha-pura, Datia.
*53	Shri Ramdas	..	..	Do.	Do.	1/39, Near Old Palace, Datia.

*Scheduled Castes & Scheduled Tribes.

DISTRICT TIKAMGARH.

54	Shri Krishna Kantt	..	..	Tikamgarh	K. M. P. P.	Village Patha, P. O. Tikamgarh.
*55	Shri Rilli	..	..	Do.	Socialist	Village & Post Tikamgarh.
56	Shri Thakur Das	..	..	Chandpura	Congress	Do.
57	Shri Narain Das	..	..	Jatara	Do.	Village & P. O. Jatara.
58	Shri Lala Ram Bajpai H.M.H.	..	..	Niwari	Do.	Civil Lines, Rewa.
59	Shri Raghuraj Singh	..	..	Lidhaura	Do.	Village & P. O. Lidhaura.
60	Shri Shyam Lal Sahu	..	..	Prithipur	Do.	P. O. Niwari.

*Scheduled Caste & Scheduled Tribes.

CONGRESS	..	39	Members.
SOCIALIST	..	11	Members.
K. M. P. P.	..	3	Members.
R.R. PARISHAD..	2	Members.	
JANSANGH	..	2	Members.
INDEPENDENT	..	2	Members.
VACANT	..	1	Member.
TOTAL	..	60	Members

[No.F.24/58.]

SHAVAX A. LAL, Secretary.

